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**Before the
Federal Communications Commission
Washington, D.C. 20054**

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COMMUNICATIONS

In the Matter of)
)
Implementation of the)
Local Competition Provisions of the)
Telecommunications Act of 1996)

CC Docket No. 96-98

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**COMMENTS OF
MASSACHUSETTS ELECTRIC COMPANY
THE NARRAGANSETT ELECTRIC COMPANY
GRANITE STATE ELECTRIC COMPANY
NEW ENGLAND POWER COMPANY
NEES TRANSMISSION SERVICES, INC.
ON ACCESS TO RIGHTS OF WAY**

Dated: May 20, 1996

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EXECUTIVE SUMMARY

The NEES Companies' comments address the rules and policies for access to rights-of-way, including poles, ducts, and conduits by telecommunications service providers. The NEES Companies advocate that the Commission, in implementing the "nondiscriminatory access" provisions of the Telecommunications Act of 1996 ("the Act"), should consider the differences between various types of electric facilities, and the types of access sought by telecommunications carriers, along with related issues of capacity, safety and reliability.

The NEES Companies believe that specific issues regarding modification of facilities, and associated notification and cost issues, should be left to contractual arrangements between affected parties, rather than generic rules. The Commission is encouraged to implement Section 224 of the Act in a manner that does not cause detrimental consequences to a safe and reliable supply of electricity, and does not unfairly require electric ratepayers to subsidize telecommunication carrier costs.

The NEES Companies explain that electrical facilities fall into two basic categories: distribution and transmission. While telecommunications carriers should expect reasonable, nondiscriminatory access to overhead distribution lines, underground facilities may present safety issues, and issues regarding easements and rights of way. Thus, the NEES Companies request that underground electric distribution lines be excluded from mandatory access provisions. In addition, all electric transmission lines should be excluded from mandatory transmission requirements, due to the potential impact on electric service reliability.

The NEES Companies argue that it would be extremely difficult to develop rules to cover all instances where access will be legitimately denied, and therefore urge that a case-by-case approach be adopted. If the Commission determines that it must adopt guidelines, several general issues are addressed:

- Capacity:** The FCC should include both current and planned future capacity in determining whether sufficient capacity is available for access.
- Safety:** Safety depends on adequate structural strength, adequate separation, and safe electrical design. There also are worker safety issues, such as OSHA requirements and NESC codes.
- Reliability:** Reliability is influenced by weather, accidents, age, design, construction and condition and age of lines. Thus, no single standard is appropriate.
- Engineering:** Generally applicable engineering standards include local regulatory, permit, right-of-way requirements, practical construction issues. All engineering issues should be resolved in favor of standard industry practices.

The NEES Companies oppose the imposition of a burden of proof on utilities to justify a denial of access. There also is no need to establish specific rules at this time regarding fair and reasonable allocation of capacity. Such matters should be handled on a case-by-case basis.

Similarly, the Commission should not establish specific requirements at this time regarding the manner and timing of notices to afford a "reasonable opportunity" to make modifications or additions. The involved parties can address such issues on a contractual basis. Issues regarding how to allocate costs for modifications also should be addressed on a case-specific basis. The NEES Companies oppose any requirement that payment of costs should be "offset" by potential revenue increases to the owner

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MASSACHUSETTS ELECTRIC COMPANY
THE NARRAGANSETT ELECTRIC COMPANY
GRANITE STATE ELECTRIC COMPANY
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NEES TRANSMISSION SERVICES, INC.
REGARDING ACCESS TO RIGHTS-OF-WAY**

Several retail and wholesale electric utility companies within the New England Electric System, a public utility holding company (the "NEES Companies"),¹ submit these comments in accordance with Section 1.415 of the Commission's rules, and the Federal Communication Commission's ("Commission" or "FCC") April 19, 1996, *Notice of Proposed Rulemaking* ("NPRM") in the above-captioned proceeding. The NEES Companies offer an electric utility company perspective for the Commission's consideration in this docket, and offer comments specifically directed to rules and policies for access to rights-of-way, including poles, ducts, and conduits by telecommunications service providers

¹ The affected companies include Massachusetts Electric Company, The Narragansett Electric Company, and Granite State Electric Company -- retail electric companies; New England Power Company -- a wholesale electric generation and transmission company; and NEES Transmission Services, Inc. -- a newly-proposed subsidiary of the New England Electric System which, upon approval by the Federal Energy Regulatory Commission ("FERC") and the Securities and Exchange Commission ("SEC"), will provide transmission services over those facilities throughout the three-state service territories of the companies of the New England Electric System.

The Commission, in developing rules and policies to implement the “nondiscriminatory access” to rights-of-way provisions of the Telecommunications Act of 1996, should consider differences between various types of electric facilities, and the types of access sought by telecommunications carriers, along with related issues of capacity, safety, and reliability. The NEES Companies respectfully suggest that issues regarding modification of electric facilities and accompanying notification and costs for connecting telecommunications carriers are best left to contractual arrangements between the parties in question, rather than to specific rules that may not be tailored to individual circumstances.

I. DEFINITION OF NONDISCRIMINATORY ACCESS

The Commission has requested comment upon the meaning of “nondiscriminatory access” in the context of local exchange carrier (“LEC”) provision of access to rights-of-way. Section 224(f)(1) of the Communications Act of 1934 (the “1934 Act”, as amended by the Telecommunications Act of 1996, the “1996 Act”), requires a utility to provide nondiscriminatory access to “any pole, duct, conduit, or right-of-way owned or controlled by it.” Section 224(a)(1) of the 1934 Act, as amended, defines a utility as any person “who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications.” In combination, these provisions are intended to promote local telecommunications competition by providing for access to poles, ducts, conduits and rights-of-way used for wire communications.

In administering these provisions, the FCC must take care that its policies and regulations do not go beyond the stated intent of Section 224(f). Certainly the Commission should avoid detrimental consequences to a safe and reliable supply of electricity, and policies regarding

Section 224(f) should not be implemented in a fashion that would unfairly require utility ratepayers to subsidize telecommunications carriers. Therefore, in defining "nondiscriminatory access," the FCC should recognize that legitimate access to rights-of-way may be distinguished by the type of electric facility, the type of access sought by the various telecommunications carriers, by facility capacity, safety, and reliability, and on electric industry standards.

A. Legitimate Limitation of Access on the Basis of Type of Electric Facility

Electric utilities own or control many poles, ducts, conduits, or rights-of-way that are used for wire communications. Each type of electric facility presents different opportunities and obstacles to access by third parties. Some of the poles, ducts, conduits or rights-of-way owned or controlled by electric utilities are not suitable, adaptable or safe for use by any wire communications. An understanding of the different categories of electric facilities is essential for the development of an appropriate access policy.

Electric facilities fall into two basic categories: distribution and transmission lines. Electric distribution lines are overhead or underground lines, typically located in streets or backyards, delivering power locally to individual customers. Electric transmission lines are overhead or underground lines that carry bulk power at higher voltages for long distances on rights-of-way and provide little or no access to customers.

1. Overhead Electric Distribution Lines

Overhead electric distribution lines frequently are located on poles shared with wire communications, providing access to individual customers for both electric and telecommunications services. These poles are the primary facilities to which telecommunications

carriers should expect reasonable, nondiscriminatory access in accordance with certain standards, including safety, reliability, and capacity, as discussed in greater detail below.

2. Underground Electric Distribution Lines

Underground electric distribution lines include direct buried lines and conduit. Each type of facility is discussed more fully below.

a. Direct Buried Lines

Underground electric distribution lines may be installed in manhole, duct and conduit systems or directly buried in the earth. Directly buried underground electric distribution lines are generally located in public ways or public utility easements that are controlled by state or local governments and shared with communications wires. Where underground electric distribution lines are directly buried, electric utilities operate within the rights granted to them in the applicable easement and, in most instances, the utility cannot provide any greater rights to a third party telecommunications carrier than the utility itself possesses. Electric utilities and their affiliates therefore may not have the power to grant or deny access to third parties their rights-of-way, if the legal agreements with a landowner limits such uses. The FCC's regulations thus should not require the utilities to provide access to facilities where legal limitations prevent the utility from providing such access.

b. Conduit

When underground electric distribution lines are installed in manhole, duct and conduit systems, such underground electric distribution lines are typically separated from underground wire communications, for safety reasons. Underground electric distribution ducts and conduits

provide access to individual customers for electric service but, for safety reasons, have historically not been used for wire communications. Critical safety issues, such as worker safety, qualifications and training must be considered with regard to such facilities. Working in or around electric manholes, ducts or conduits requires specialized training in safe work practices. The required training includes confined space ventilation and air quality monitoring, personnel recovery from confined spaces, and electrical hazard and equipment identification. In the past, communications workers generally have not been trained to work around electrical lines. Mandating access to these facilities, without adequate safety regulations and worker training, could prove very dangerous for communications workers and overly burdensome for electric utilities. The NEES Companies therefore request that underground electric distribution be expressly excluded from the mandatory access provisions.

3. Electric Transmission Lines

In the past, electric transmission lines have not been used or needed to provide local access for either electric or telecommunications services. In addition, electric transmission lines are individually designed with little or no excess capacity, with the result that typically there is little or no space or strength available for installing communications wires. Mandatory access to electric transmission lines will do little to promote local competition.

Electric transmission lines serve large numbers of customers and are critical to reliable electric service. Whether overhead or underground, electric transmission lines are designed to be extremely reliable and even a small change in their structures can affect electric service reliability across an entire region. Wires that were not allowed for in the original designs reduce

the reliability of an electric transmission line by imposing additional loads on structures, potentially threatening the reliability of electrical supply. For that reason, some states have enacted regulations designed to address such threats. The Commonwealth of Massachusetts, for example, has recognized this threat and therefore expressly bars, by law, attachments by outside parties to transmission facilities. G.L. 166, § 25A.

The potential impact on electric service reliability is a serious issue, and such reliability concerns outweigh the value of access to electric transmission lines for telecommunications uses. Therefore, the NEES Companies respectfully request that electric utilities not be required to include use of these facilities within the class of facilities subject to the mandatory access provisions.

B. Legitimate Limitation of Access on the Basis or Type of Access Sought

In providing nondiscriminatory access, a utility should require generally similar terms and conditions for that access from all telecommunications carriers, including the utility or its affiliates. It is reasonable to expect a utility to require itself, affiliates, cable television systems and telecommunications carriers to adhere to the same standards for design, installation, operation, maintenance and removal of their pole attachments. Adherence to the same standards ensures that shared facilities can be built, operated and maintained in a safe, reliable and economic fashion for all parties sharing the facilities.

On the other hand, it is unreasonable to expect that specified identical access terms and conditions would fit all installations for a variety of different telecommunications carriers. Necessary terms and conditions for such agreements could cover a wide range of issues,

including: responsibilities for design, installation, operation, maintenance, removal, safety and reliability; business issues of fees, payments and liability; and all of the related administrative procedures and communications. Considering the variety of cable television systems and telecommunications carriers, each with its own preferred methods of operation, the NEES Companies respectfully submit that it would be unrealistic and unreasonable to expect identical, "one size fits all" terms and conditions to address all possible arrangements.

Examples of cases where identical terms and conditions would be impractical or impossible would be:

- One telecommunications carrier has a limited operating presence and ability to respond off-hours or transfer wires for pole replacements in a specific area and wishes to have a utility provide these services, while another carrier has an extensive operating presence and does not want those services.
- Working in or around electric manholes or ducts requires specialized training in safe work practices. One telecommunications carrier may have adequately qualified and trained workers while another does not provide adequate training.
- When a utility builds extra capacity (extra ducts/pole height) with future expansion in mind, the utility should not be obligated to provide this capacity at the same terms (i.e., no additional cost) to others. When the utility requires additional capacity which has been provided to others, its customers would be required to pay for it again, frequently at significantly greater cost.

These kinds of issues must be negotiated between the involved parties based on their specific capabilities and economics. Such arrangements are by far the most efficient means of accommodating the specific needs of telecommunications carriers and the electric utilities providing access.

C. Legitimate Limitation of Access on the Basis of Capacity, Safety, Reliability, or Accepted Electric Engineering Standards

In the NPRM, the FCC seeks comments on section 224(f)(2) of the 1934 Act, as amended, which provides that an electric utility may deny access “on a nondiscriminatory basis where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes.” Congress recognized, in including this language, that the capacity of *electric* poles, ducts, conduits and rights-of-way to accommodate additional communications wires is not unlimited and that at some point it will be necessary to deny further access. Congress enumerates a number of reasons for which access may be denied and the FCC has asked for comments on each of these enumerated reasons.

Making rules in advance requires anticipating and identifying all of the cases where access may be legitimately denied or all of the cases where access may not be denied. Legitimate reasons for denying access in most instances will be location and case specific and any attempt to identify all possible cases in advance would be infeasible and could result in unfair or even dangerous consequences. Therefore, the NEES Companies suggest that the FCC defer rulemaking on these issues and deal with them on a case-by-case basis.

If the FCC nevertheless is determined to develop advance rules or guidelines, the following describes some of the most important issues to be considered.

1. Capacity

Simply stated, “insufficient capacity” is the case where an additional communications wire cannot be accommodated by existing available poles, ducts, conduits or rights-of-way. For

example, a facility can be considered to lack sufficient capacity for additional access where all of the ducts in a duct bank are full or where all of the space or strength of a pole is used. Another example of insufficient capacity exists when an electric utility has dedicated facility capacity for anticipated future use. When constructing facilities (such as poles, ducts, conduits or rights-of-way), electric utilities plan and provide for long and short term needs. Examples would be installing poles with additional space and strength to allow for an anticipated additional circuit, installing additional ducts in a duct bank to allow for anticipated growth, or purchasing rights-of-way that allow for anticipated future lines. An electric utility must be able to protect the capacity it has allocated for future growth in electric services

For example, when an electric utility builds a new substation, it does so with a planned ultimate design and capability to provide adequate electric service in the area for many years. The electric utility will also plan for transmission and distribution lines to match and supply the ultimate planned capability of the new substation. This planning process is designed to permit the utility to purchase rights-of-way sufficient to allow for all the transmission lines required to supply the ultimate plan; underground distribution line manhole, duct and conduit systems will be sized for the ultimate plan; or overhead distribution line poles will be sized for anticipated future line requirements. If this planned-for future capacity is lost, this additional capacity may be impossible to replace at all at any price or, at best, the replacement process will be costly. In such event, all of the planning and investment (by electric utility customers) in developing and preserving such capacity for future planned use will be lost. The need for such capacity has been carefully predicted, and long term commitments have been made to develop and preserve for

planned capacity needs, supported by the ratepaying customers of the utility. The NEES Companies recommend that any rules governing a definition of "insufficient capacity" incorporate and recognize the need for planned future use by the electric utility.

In some cases, it may not be practicable for *any* telecommunications carrier to place its equipment in or on a particular electric facility. The capacity of poles, ducts, conduits and rights-of-way to accommodate additional communications wires is not unlimited. At some point in providing access, a utility must determine whether access is feasible, such as if the capacity of the facilities has already been reached; i.e., the last duct or conduit has been filled or there is no additional space or strength available on a pole, or a right-of-way is fully occupied. The electric utility should be able to, consistent with the 1996 amendments to the Communications Act, deny to all telecommunications providers (and therefore in a nondiscriminatory manner) access to a particular facility owned or controlled by the electric utility.

2. Safety

Safety issues involved in access to electric utility poles, ducts, conduits and rights-of-way affect the public, communications workers and electric workers. Safety for each of these groups depends on adequate structural strength, adequate separation and safe electrical design. Adequate structural strength means that a pole, manhole, duct or conduit will not collapse. Adequate separation means that an overhead wire is high enough that a vehicle driving under it will not hit the wire, and that wires on a pole will not hit each other. In addition, there must be adequate space for workers on a pole or in a manhole. A safe electrical design means that all of the wires

sharing a pole, duct, conduit or right-of-way are properly grounded and adequately insulated and isolated.

These issues are addressed by a variety of federal, state and local regulations, industry standards and local electric utility standards. For example:

- OSHA and many states provide regulations covering worker training requirements, equipment and work methods.
- The National Electrical Safety Code ("NESC"), National Electric Code and other industry standards provide minimum industry standards for strength, clearances, insulation, grounding, isolation and working space.
- Individual electric utility standards provide standardized designs and work methods to meet all these requirements and provide additional safety based on an individual electric utility's experience.

Individual electric utilities have identified safe practices that exceed national standards, but are necessary to meet local conditions. Examples of these practices are:

- Structural strength design requirements for poles that allow for local extreme wind, ice or snow.
- Clearance requirements above ground that allow for local industrial practices, such as oversized equipment in farming, mining or quarry operations.
- Additional working clearances on a pole to allow for utility specific work methods, such as hot stick work. To maintain high reliability, electric lines are worked on while energized. One method is using "hot sticks." These are 6-10' long fiberglass insulated tools that isolate the worker from the lines they are working on. Because of the size of the tools, space beyond code minimums are required to allow work to be performed this way.
- Additional working clearances in manholes to allow the installation of protective barriers for worker protection.

Any regulations defining reasonable denial of access to electric facilities must recognize the importance of individual electric utility standards in promoting safety and that meeting regulatory and industry standards is a minimum requirement, but is not sufficient to guarantee safety. The NESC recognizes this when it states that it is "not intended as a design specification."

Section 1, paragraph 010 "Purpose" (1993 3d.)

To guarantee safety to the public, communications workers and electric workers, electric utilities must be able to deny access based on the requirements of all applicable regulations, industry standards and its own standards.

3. Reliability

At present, it is not possible to quantify, on a predictable basis, a threat to electric line reliability from a change in the line. Electric line reliability is high (measured in terms of events per hundred miles per year) and is affected by many factors, including the weather, accidents and the age, design, construction, condition and maintenance of the lines. For the same reasons, measuring the effect on reliability of a change in a line requires many miles of lines and many years to average out the effects of extraneous factors. Since utilities cannot quantify a threat to electric reliability, it is not possible to set specific minimum or quantified standards to use for denying access.

The design, construction and maintenance of lines are built into electric utility standards using the utility's local experience. Adherence to these standards is the best way to protect the present high level of reliability of electric service and must be included in reasons that access may be denied.

4. Generally Applicable Engineering Standards

Generally applicable engineering standards include all of the practical real world construction, design and maintenance issues affecting rights-of-way. Examples would be local regulatory, permit or right-of-way requirements or limits, practical construction limits or future plans.

State or local governments have authority to regulate the placement, location, size and type of facilities that may be placed in public ways or on rights-of-way. Local requirements govern such details as: where a pole can be placed, how tall it can be, and how or when it can be worked on; where a duct bank can be installed, how it must be maintained, and how or when it can be worked on; and what activities may be pursued on a right-of-way.

There are limits to what can be reasonably built and maintained on facilities. For example:

- Pole sizes are limited by local regulation, by availability, by the capabilities of the utility's construction equipment, by truck length permit limits and by access to pole locations. Such limitations include:
 - Wood poles that exceed 50 feet in length are available only in limited quantities.
 - Some towns do not allow pole heights over 40 feet above ground level.
 - States require special permits for trucks over specified lengths, limiting transportation of long poles.
 - Standard bucket trucks reach the tops of 45-foot poles. The NEES Companies will need to replace their entire fleets if pole heights regularly exceed this length.

- Electric utilities typically require that all communications wires be installed on one side of the pole. This significantly simplifies maintenance pole replacements later and eliminates the need to cut and splice communications wires to get them to the opposite face of the pole.
- Duct bank sizes and locations are limited by other facilities that already exist under the street.
- Work on or in duct banks is limited by local regulation. These local limits include hours when work may be performed, when, how or whether a street may be opened, what repairs or repaving will be required and strength requirements.

The NEES Companies respectfully submit that the FCC should recognize in its regulations that telecommunications carriers must have realistic expectations about what may be reasonably built, and that any doubts as to whether attachments should be allowed, consistent with safety, reliability, and generally applicable engineering purposes, be resolved in favor of the utility's reasoned determination on the matter, in accordance with standard industry practice.

D. Burden of Justifying Reasonable Denial Access

The Commission has requested comment as to whether it should establish regulations that expressly impose on utilities the burden of proving that they are justified in denying access. The NEES Companies oppose the imposition of such a burden of proof. The 1934 Act, as amended, specifically identifies reasons for an electric utility to deny access. To impose a burden of proof on the utility is to presume that the utility is in all cases wrongfully denying access and will effectively eliminate the ability of the utility to deny access except where capacity does not exist.

The FCC has also requested comment as to whether it should establish regulations to ensure that a utility fairly and reasonably allocates capacity. The NEES Companies respectfully

submit that the Commission need not and should not establish such regulations. Promulgating such rules in advance requires identifying every case where capacity may be limited and such capacity therefore must to be allocated between parties. In addition, it will be difficult to anticipate in advance how to specify a fair and reasonable allocation of capacity for each of those cases. Such cases will always be location and case specific and trying to identify all possible cases in advance would be impossible. The NEES Companies believe that there will be few disputes arising from such situations. Therefore, the NEES Companies request that the FCC defer rulemaking on these issues and address them instead on a case-by-case basis.

II. MODIFICATIONS TO UTILITY FACILITIES

Section 224(h) of the 1934 Act, as amended, requires an owner planning to modify or alter a pole, duct, conduit or right-of-way to give written notification of these plans to each attached entity “so that such entity may have a reasonable opportunity to add to or modify its existing attachment.” 47 U.S.C.A. § 224(h) (1996). Section 224(h) also requires that an entity that uses this opportunity to add to or modify its attachment to “bear a proportionate share of the costs incurred by the owner.” Id.

A. Manner and Nature of Notice

The FCC seeks comments on whether it should establish requirements regarding the manner and timing of the notice that must be given under this provision to ensure that the recipient has a “reasonable opportunity” to add to or modify its attachment. The NEES Companies recommend that the FCC defer rulemaking on the manner and timing of the written notification required by this provision of the 1934 Act, as amended, and, if necessary, deal with these issues

on a case-by-case basis. This type of notification is only one of many notices and communications required routinely in the administration of attachments to poles, ducts, conduits and rights-of-way. These types of administrative issues are best left to be worked out between the involved parties as contractual matters. Any universal requirements on the manner and timing of these notifications could restrict the parties from developing methods that both parties find more efficient than the prescribed method. For example, in New England, a group of electric utilities, LEC's and cable television systems are developing a joint electronic information system for all construction-related notifications between participating companies, and specific requirements on the manner and timing of notices could reduce the usefulness and effectiveness of this system to all involved parties. Therefore, the NEES Companies respectfully suggest that the FCC not issue specific rules on this issue, and instead address any problems through complaint procedures.

B. Application of the "Proportionate Share" of Modification Costs to Accessing Entities

The FCC seeks comments on whether it should impose any limitations on an owner's right to modify a facility and then collect a proportionate share of the costs of such modification. For example, should it establish rules that limit owners from making unnecessary or unduly burdensome modifications or specifications. The FCC also seeks comments on whether to establish rules to determine the "proportionate share" of the costs to be borne by each accessing entity, and if so, how to make such a determination

The modification of facilities will always be location and case-specific; and thus, an attempt to identify all possible cases in advance would be difficult, if not impossible. Therefore,

the NEES Companies request that the FCC defer rulemaking on this issue and address it on a case-by-case basis.

C. Offsetting Costs With "Potential Revenues"

The FCC seeks comments on whether any payment of costs should be offset by the potential increase in revenues to the owner. For example, if the owner of a pole modifies the pole so as to permit additional attachments, for which it can collect additional revenues, should such potential revenues offset the costs borne by the entities that already have access to the pole.

The payment of costs should not be offset by any "potential increase in revenues" to the electric utility owner of the facilities. First, potential revenues are of no value unless they are realized. Second, with a requirement of offsetting potential revenues, the electric utility would not only required to accommodate the attaching entity, but also to make a speculative investment, with the best possible (but unlikely) outcome that it breaks even by actually realizing the "potential increase in revenues" immediately. The notion of charging electric utilities with some speculative revenue increase places the burden of paying for the costs of developing telecommunications competition, and subsidizing telecommunications carriers, on electric utility ratepayers.

The following example is illustrative of the unfairness that the offsetting of costs would work to the electric utility and its ratepayers. An electric utility plans a routine pole replacement as part of its maintenance obligation as owner. An attached entity that is notified requests that it be provided with one additional foot of space on the pole. Poles are available in length increments of five feet, so the new pole will be five feet longer. Allowing for the additional six inches

embedded in the ground, four and a half feet of additional usable space is created, one foot of which is occupied by the entity that requested additional space and three and a half feet of which is unused. To now expect the electric utility to offset the attaching entity's payment of costs by some "potential" revenues is to force the electric utility to purchase the additional unused space.

Some may argue that electric utilities will be allowed to pass these additional costs along to their ratepayers but, electric utilities are facing a restructuring of their own industry. In some states, this restructuring is looking at fixed prices, rate caps or performance based rates for electric "wires" services. It is unlikely that these rate structures would allow these additional costs, subsidizing telecommunications competition, to be passed along to electric ratepayers.

III. CONCLUSIONS

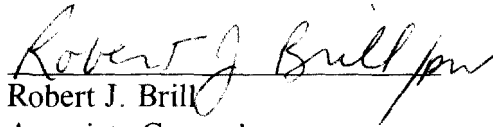
Congress sought in the Telecommunications Act of 1996 to encourage the development of competition in local telecommunications markets by removing certain legal and regulatory barriers to entry and reducing economic barriers to entry to allow for a competitive marketplace. The NEES Companies encourage the Commission to recognize in this rulemaking that any new mandatory access and pole attachment rules adopted by the Commission must be carefully crafted not to affect the ability of electric utilities to provide safe and reliable electric service. In

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addition, any such rules must not transfer the costs of promoting telecommunications competition to electric utility ratepayers.

Respectfully submitted.

**MASSACHUSETTS ELECTRIC COMPANY
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GRANITE STATE ELECTRIC COMPANY
NEW ENGLAND POWER COMPANY
NEES TRANSMISSION SERVICES, INC.**

A handwritten signature in cursive script, reading "Robert J. Brill", followed by a horizontal line and the initials "pw".

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